89-1916

No. _____ (1)

In The

Supreme Court of the United States

October Term, 1989

JEANETTE VERNA,

Petitioner,

v.

GREGORY L. COLER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Whether it is inconsistent with the Food Stamp Act to define "head of household" as the household's "primary wage earner" for purposes of a section of the Act which mandates that entire households be disqualified from receiving food stamp benefits for a period of three months if the "head of the household" voluntarily quits a job without good cause.

PARTIES TO THE PROCEEDING

Petitioner: Jeanette Verna,[1] on behalf of herself and all others similarly situated.

Respondent: Gregory Coler, in his official capacity as Secretary of the Florida State Department of Health and Rehabilitative Services.

Third Party Defendant: Clayton Yeutter,[2] in his official capacity as Secretary of the United States Department of Agriculture (USDA).

In the court from whose judgment review is sought, Petitioner was the Appellant, Respondent was the Appellee and Secretary Yeutter did not appear. In the trial court, Petitioner was the Plaintiff, Respondent was a Defendant and Third Party Plaintiff and Secretary Yeutter[3] was a Defendant and later a Third Party Defendant.

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[1] This lawsuit was originally brought by Petitioner Verna as a class action. By agreement of the parties at the trial court level, the issue of class certification was reserved until the case was heard on its merits. When Summary Final Judgment was entered against Petitioner Verna, the issue of class certification was moot.

[2] This case was originally filed against Secretary Coler and Richard Lyng, then Secretary of USDA. The complaint against Secretary Lyng was dismissed by the trial court. Secretary Coler then filed a third party complaint against Secretary Lyng. All parties moved for summary judgment and the trial court entered Summary Final Judgment in favor of Secretary Coler and against Jeanette Verna and the third party complaint became moot. During the pendency of the proceedings in the court of appeals, Secretary Lyng was replaced by Secretary Yeutter.

[3] Then Secretary Lyng.

TABLE OF CONTENTS

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[4] 467 U.S. 837 (1984)

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner, Jeanette Verna, respectfully prays that a Writ of *Certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, entered in this case on February 6, 1990.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit in *Verna v. Coler* is reported at 893 F.2d 1238 (11th Cir. 1990) and is reprinted in the Appendix to this Petition ("App".) A, p. 1a. The denial by the United States Court of Appeals for the Eleventh Circuit of Petitioner's Petition for Rehearing and Suggestion of Rehearing *En Banc* is reprinted in the Appendix, App. B p. 9a. The opinion of the United States District Court for the

Southern District of Florida is reported at 710 F. Supp. 1339 (S.D. Fla. 1989) and is reprinted in the Appendix, App. C p. 11a.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 1989. A timely Petition for Rehearing and Suggestion for Rehearing *En Banc* submitted to the court of appeals was denied on April 6, 1990.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) (1988).

STATUTES AND REGULATIONS INVOLVED

The relevant statutory provisions and regulations are reprinted in the Appendix. They are: Food Stamp Act Sections 2011, App. D., p. 20a; 2015(d), App. E., p. 21a; 7 C.F.R. § 273.1(d)(1)(2)&(3), App. F., p. 24a; and 7 C.F.R. § 273.7(g)(1), App. G., p. 26a.

STATEMENT OF THE CASE

This Petition is submitted by Jeanette Verna, who, along with her two minor children, was disqualified from receiving food stamp benefits for three months because a transient member of her household quit his job. Ms. Verna challenges Respondent's construction of a provision of the Food Stamp Act, 7 U.S.C. § 2011 *et seq.*, which mandates such a disqualification when the head of a food stamp household voluntarily leaves employment without good cause. 7 U.S.C. § 2015(d). Ms. Verna argues that Respondent's use of the term "primary wage earner" to define "head of household" is an impermissible construction of the Food Stamp Act (Act). The validity of this

definition has been challenged in federal courts throughout the country with varying results.[5]

This lawsuit was brought as a class action by the named Plaintiff, Jeanette Verna, pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, violation of the Food Stamp Act.

The primary purpose of the Act, which became law over 25 years ago,[6] is "to safeguard the health and well being of the nation's population by raising levels of nutrition among low-income households" by "permit[ting] low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for benefits."[7] In order to effect the purpose of the Act, Congress has created a food stamp program whereby participating households are given food stamps in an

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[5] *Anderson v. Lyng*, 644 F. Supp. 1372 (M.D. Ala. 1986) (invalidating regulation); *Wilson v. Lyng*, 662 F. Supp. 1391 (E.D.N.C. 1987) *rev'd*, 856 F.2d 630 (4th Cir. 1988) (district court decision invalidating regulation reversed by appellate court); *Verna v. Coler*, 710 F. Supp. 1339 (S.D. Fla. 1989) *aff'd*, 893 F.2d 1238 (1990) (declaring the voluntary quit regulation to be a permissible construction of the Food Stamp Act); *Dubuque v. Yeutter*, 728 F. Supp. 303 (D. Vt. 1989), *appeal docketed sub nom. Yeutter v. LePage*, No. 90-6043 (2d Cir. Feb. 5, 1990) (invalidating regulation despite ruling by Fourth Circuit Court of Appeals in *Wilson*. *Dubuque*, at 317); *Maine Association of Interdependent Neighborhoods v. Commissioner*, 739 F. Supp. 248 (D. Me. 1990), *appeal docketed* No. 1342 (1st Cir. May 8, 1990) (invalidating regulation despite Eleventh Circuit Court of Appeals decision in this case); *Valensuela v. Yeutter*, Case #90-134-TUC-RMB (S.D. Ariz. 1990) (case recently filed with no disposition on merits to date).

[6] Pub. L. 88-525, 78 Stat. 702.

[7] 7 U.S.C. § 2011.

amount necessary to provide them with an adequate diet.[8]

The Secretary of the United States Department of Agriculture (USDA) has the overall responsibility for the formulation and administration of the food stamp program.[9] Under the statutory scheme, however, states which elect to participate in the food stamp program, have the responsibility for the day-to-day operation of the program.[10] In Florida, the food stamp program is administered by the Florida State Department of Health and Rehabilitative Services (HRS). Respondent Coler, as Secretary of that agency, is responsible for implementation and oversight of the program.

In order to receive food stamps, a household must meet certain eligibility requirements and survive certain disqualifications. One such disqualification, mandated by the Act, is that an otherwise eligible family whose "head of household" voluntarily quits a job without cause, is disqualified from receiving food stamp benefits for a period of three months. 7 U.S.C. § 2015(d).

In order to effectuate the voluntary quit portion of the statute, the Secretary of USDA promulgated a regulation which defines "head of household" as that household's "principal wage earner" 7 C.F.R. § 273.1(d)(2). As head of the state agency administering the food stamp program in Florida, Respondent Coler issued a parallel internal rule defining "head of household," for purposes of the voluntary quit disqualification, as the household's "primary wage earner", HRS Manual, Chapter 8-13. Both the USDA regulation and HRS manual provision define

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[8] 7 U.S.C. § 2017. *See also* 7 C.F.R. § 271.2.

[9] 7 U.S.C. § 2013.

[10] 7 U.S.C. § 2020.

"principal" or "primary wage earner" as the person who had the greatest amount of earned income in the two months preceding the month the voluntary quit took place.[11]

In October 1985, Petitioner Verna applied for food stamp benefits at the HRS food stamp office in Indian River County, Florida, Ms. Verna named herself on the application as head of the household, and listed her two children, Robert and Patricia Verna, and her boyfriend, Lawrence Riley, as members of the household. Although Mr. Riley at times earned more money than Ms. Verna, he was a transient member of the household, and even when present, contributed only to the rent. Ms. Verna maintained the lease and all utility accounts for the household under her name. Moreover, Ms. Verna bought and prepared the family's food, and she alone provided for the children's schooling and medical needs.

In 1986, through reporting requirements mandated by the Act, HRS learned from Ms. Verna that Lawrence Riley had voluntarily quit a job without good cause. As a result, the entire household, although eligible in all other respects, was disqualified from receiving food stamp benefits for three months. Ms. Verna requested that HRS restore all food stamp benefits withheld from her during the three month period. Petitioner argued that the agency's manual provision requiring the disqualification when the household's primary wage earner voluntarily leaves employment violated the Food Stamp Act because this sanction only applies when the "head of household" quits. Following the agency's denial of this request for restoration of benefits, Ms. Verna filed suit in federal district court alleging that the HRS manual provision and

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[11] 7 C.F.R. § 273.1(d)(2).

the codified federal regulation on which it was based violated the Food Stamp Act. 7 U.S.C. § 2015.[12]

On cross motions for summary judgment, the trial court entered judgment in favor of Respondent and against Ms. Verna, holding that the regulation in question was "reasonable" under the test articulated by this Court in *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). App. C, p. 15a.

Ms. Verna filed a timely appeal with the United States Court of Appeals for the Eleventh Circuit and after oral argument, a split panel affirmed the trial court's decision and adopted its opinion. App. A, p. 2a. Court of Appeals Judge Hatchett filed a dissenting opinion, arguing that the district court incorrectly applied the test for deference to agency interpretations, set forth by this Court in *Chevron*. App. A, p. 3a-8a. Ms. Verna filed a timely Petition for Rehearing and Suggestion of Rehearing *En Banc* which was denied by the court of appeals on April 6, 1990. This Petition now follows.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ADOPTED BY THE ELEVENTH CIRCUIT COURT OF APPEALS IMPROPERLY APPLIED THE TEST FOR JUDICIAL DEFERENCE TO AGENCY INTERPRETATIONS SET FORTH BY THIS COURT IN *CHEVRON U.S.A., INC. V. NATURAL RESOURCES DEFENSE COUNCIL.*[13]

The Court has often considered the misapplication of its decisions as a basis for jurisdiction over petitions for

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[12] The preceding recitation of facts, pertaining specifically to Ms. Verna, is virtually identical to the language of the trial court's opinion. The facts, as the court stated, were never in dispute. App. C, p. 12a.

[13] 467 U.S. 837 (1984).

writs of *certiorari*. *Schulde v. C.I.R.*, 372 U.S. 129, 130 (1963) (to consider whether the lower court misapprehended the scope of *American Automobile Association v. United States*, 367 U.S. 687 (1960)); *Wilkinson v. United States*, 365 U.S. 399, 401 (1961) (to consider whether the court of appeals misconceived the meaning of *Barenblatt v. United States*, 360 U.S. 109 (1958)); *Braen v. Pfiefer Oil Transportation Co.*, 361 U.S. 129, 130 (1959) (to consider whether the decision of the court of appeals seemed out of line with authorities); *Upshaw v. United States*, 335 U.S. 410 (1948) (to review the court of appeals determination that the case fell outside the scope of *McNabb v. United States*, 318 U.S. 332 (1942)); *McCandless v. Furland*, 296 U.S. 140, 156 (1935) (to determine whether the doctrine of *Old Dominion Copper v. Lewison*, 210 U.S. 206 (1907) applies).

In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), this Court set forth the now definitive[14] analytical test for judicial review of agency interpretations of statutory schemes.

Under *Chevron*, a reviewing court applies a two-part test to the agency interpretation of the statute in question.

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter;

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[14] In *INS v. Cardoza – Fonseca*, 480 U.S. ___, 107 S.Ct. 1207 (1987) and *NLRB v. United Food & Commercial Workers Union*, 484 U.S. ___, 108 S.Ct. 413 (1987), this Court reiterated its adherence to the test set forth in *Chevron*. Justice Scalia, concurring in *NLRB*, stated that he wrote separately "only to note that our decision demonstrates the continuing and unchanged *vitality* of the test for judicial review of agency determinations of law set forth in *Chevron*." *Id.* at 108 S.Ct. 426 (emphasis supplied and citations omitted).

> for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statue.

Id. at 842-43.

The district court, despite acknowledging *Chevron* as the proper test for deference, completely misapplied its mandate.

A. The District Court Completely Ignored Step One Of The *Chevron* Test.

The district court set forth the components of the *Chevron* two-step test in the text of its opinion, but confined its analysis only to the second prong of the test. Rather than first determining whether Congress had clearly expressed an intent with regard to the question at issue, the district court proceeded directly to a discussion of whether the regulation was reasonable. If the challenged regulation cannot pass the first step of the *Chevron* test, there is no need to even discuss the reasonableness of the regulation itself.[15]

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[15] As Justice Scalia stated in his concurring opinion in *INS v. Cardoza – Fonseca,* " . . . since the Court quite rightly concludes that INS's interpretation is clearly inconsistent with the plain meaning of that phrase and the structure of the act . . . there is simply *no need and thus no justification for a discussion of whether the interpretation is entitled to deference." Id.* at 107 S.Ct. at 1224 (emphasis supplied and citations omitted).

Had the district court actually applied the required first step of the *Chevron* analysis, the inescapable conclusion would be that the voluntary quit regulation is invalid.

The fact that the term "head of household" is not defined in the Food Stamp Act does not automatically render the term "ambiguous" or the statute silent. Nor does it compel a reviewing court to move immediately to step two of the *Chevron* analysis.

In administering step one of the *Chevron* test, a reviewing court must employ traditional tools of statutory construction.[16] *INS v. Cardoza-Fonseca* at 107 S.Ct. 1220-21. The first step in determining whether Congress intended to give the statutory provision a specific meaning is to look at the plain meaning of the word itself. *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361 (1986). It is a fundamental tenet of statutory construction that words will be interpreted according to their ordinary contemporary and common meaning unless defined otherwise. *Perrin v. United States*, 444 U.S. 37, 42 (1986).

"Head of household", the statutory term construed by Respondent to mean "primary wage earner," has a broad meaning and is commonly understood to be the

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[16] Several opinions of this Court, subsequent to *Chevron*, which were either unanimous or joined by all Justices participating, indicate that "traditional tools of statutory construction" such as an examination of the language of the statue and its legislative history are appropriate analytical devices at step one of the *Chevron* test. *Bowen v. Georgetown University Hospital* ___ U.S. ___, 109 S.Ct. 468 (1988); *Bethesda Hospital Association v. Bowens*, ___ U.S. ___, 108 S.Ct. 2854 (1988); *Etsi Pipeline Project v. Missouri*, ___ U.S. ___, 108 S.Ct. 805 (1988); *NLRB. v. United Food and Commercial Workers*, ___ U.S. ___, 108 S.Ct. 413 (1987); *United States v. City of Fulton*, 475 U.S. 657 (1986); *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985).

person most responsible for the health and welfare of the household. *See Anderson v. Lyng*, 644 F. Supp. 1372, 1375 (M.D. Ala. 1986).

> As Judge Hatchett stated in his dissent in this case: The term, "head of household", suggests on its face the person most responsible in the household; the person with primary responsibility for the household. Both the common dictionary definition and Black's Law Dictionary support a similar construction of the term. *Webster's New Collegiate Dictionary*, 522 (1979) ("head" defined as principal, chief); *Black's Law Dictionary*, 648 (1979) ("head of household" defined as individual who actually supports and maintains individuals who are closely connected with him or her).

Verna v. Coler, App. A, p. 5a-6a (citations omitted). The substitution[17] of the term "primary wage earner" in many instances completely undermines the ordinary notion that the head of a household is the individual exercising responsibility for the well-being of the household. The practical effect of this substitution of terms is that individuals who are not heads of households, and who have little or no concern about the welfare of the household, subject an entire family to the harsh sanction if they voluntarily quit a job.[18]

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[17] The district court conceded that the promulgation of the voluntary quit regulation was actually a substitution in terms. "Pursuant to this authority (to issue regulations necessary or appropriate to implement the Food Stamp Act), the Secretary has issued a regulation that *substitutes* the term 'primary wage earner' for 'head of household' ". *Verna v. Coler*, App. C. at p. 14a (parenthetical material and emphasis supplied). While agencies are allowed to interpret statutory terms, (subject to the limits set forth in *Chevron*) effectively re-writing statutory language, as was done here, is the sole prerogative of Congress.

[18] In this case, Petitioner Verna and her two children went without vital food stamp benefits they were otherwise

(Continued on following page)

The use of the term "head of household" in other federal regulatory schemes further supports this commonly understood notion that such an individual is the person primarily responsible for the household.

The regulations governing Supplemental Security Income (SSI) issued by the Social Security Administration consider an applicant/recipient to be a "head of household" if he or she is "responsible for the day-to-day decisions in the operation of [the] household." 20 C.F.R. § 416.1866(a).

A Bureau of Indian Affairs (BIA) regulation (regarding Navajo/Hopi relocation payments) defines head of household (as used by Congress in the governing statute) as "that individual who speaks on behalf of the members of the household and who is designated by the household members to act as [the head]." 25 C.F.R. § 700.69(b).

(Continued from previous page)

financially entitled to, solely due to the actions of a transient member of her household who exercised no responsibility for the household. *Verna v. Coler*, App. C at p. 12a.

Similar situations have resulted in challenges to the voluntary quit regulations in federal courts throughout the country. In *Dubuque v. Yeutter*, 728 F. Supp. 303 (D. Vt. 1989), a mother and her three children were disqualified from receiving food stamp benefits when her boyfriend, who was not the father of her children and had no duty to support them, voluntarily quit his job. In that same case, Marie Dubuque, a 59-year-old disabled woman, was sanctioned because of the actions of her 20-year-old daughter who was living with her on a temporary basis.

In *Wilson v. Lyng*, 662 F. Supp. 1391 (E.D.N.C. 1987), Annie Wilson, a 63-year-old disabled woman, was disqualified because of the action of one of her adult sons. Gloria Green, a single parent and also a plaintiff in *Wilson*, was sanctioned along with her two small children because of the conduct of her 22-year-old brother-in-law. *Id.* at 632.

Both of these regulations recognize the decision-making aspect of the traditional head of household definition. Other regulations recognize that the head's financial support of the family may be derived from sources other than earnings.[19] For example, another BIA regulation (regarding payment of Sioux benefits) provides that welfare or support payments received by an applicant from the government or his/her spouse will be deemed attributable to the applicant in determining whether he or she is the "head of a family." 25 C.F.R. § 125.4(c)(3).

Similarly, regulations governing public and subsidized housing programs (including the section 502 Farmers Home Administration loan program administered by Secretary Yeutter) recognize that an elderly disabled person who is unable to work and receives social security or other government benefits may be considered as the "head" of the family. *See* 7 C.F.R § 1944.2(d)(1), 24 C.F.R. §§ 812.102; 912.102.

Conversely, when Congress has intended the term "head of household" to have a more limited or technical meaning, it has expressly defined the phrase in such a limited manner in the statute itself. See 26 U.S.C. § 29B, 26 C.F.R. § 1.2-2 (defining "head of household" for purposes of federal income tax rates).

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[19] The voluntary quit regulation only considers "earned" income for the basis of determining who is the household's primary wage earner. Child support, alimony, social security, SSI, pensions or government benefits would not be considered "earned" income. As a result, a woman who was the caretaker of three very young children and who received alimony and child support as her only source of income would not be considered the head of her household, for purposes of the voluntary quit regulation, if her adult sister, who was employed at least 20 hours per week, joined her household on a temporary basis.

In addition, an employed spouse may be considered as a "head of a family" (for purposes of property exemptions under the bankruptcy law) even though her husband is the household's primary wage earner. *Cheeseman v. Nachman*, 656 F.2d 60, 63 (4th Cir. 1981). "Head of household" has a clear, common and ordinary meaning and is therefore not ambiguous as used in the Food Stamp Act.

Even if a reviewing court were to conclude that "head of household" does not have a common ordinary meaning, that does not render the term "ambiguous" so as to automatically invoke the reasonableness analysis mandated by step two of *Chevron*.[20]

Instead, the reviewing court should proceed to the next level of analysis under step one of *Chevron*. That phase of analysis requires an examination of the legislative history and the structure of the Act as a whole, to determine whether Congress intended the term to have a partularized meaning. *Davis v. Michigan Dept. of Treasury*, ___ U.S. ___, 109 S.Ct. 1500, 1504 (1989); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988); *FDIC v. Philadelphia Gear Corp.*, 476 U.S. 426 (1985); *Board of Governors v.*

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[20] The district court in *Dubuque* and *Maine Association of Interdependent Neighborhoods*, employed the "plain meaning" analysis at step one and concluded that "head of household" as used in the Food Stamp Act did not have a common ordinary meaning. *See also, United States Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973). Both courts, however, found that the legislative history and the structure of the Food Stamp Act showed clear congressional intent that the term has a particularized meaning, and that use of the "primary" or "principal wage earner" definition undermined that intent. Both courts invalidated the voluntary quit regulation. It is significant that *Maine Interdependent Neighborhoods*, was decided well after the Fourth Circuit's decision in *Wilson* and after the Eleventh Circuit decision in this case. The appeals court's opinion in this case is specifically cited, discussed and rejected by the Maine district court.

Dimension Financial Corp., 474 U.S. 361 (1986); *Connecticut Dept. of Income Maintenance v. Heckler*, 471 U.S. 524 (1985).

The legislative history of the voluntary quit sanction, the entire regulatory scheme and the structure and purpose of the Food Stamp Act all show clear congressional intent that "head of household" be a person with primary authority and responsibility for the household's participation in the food stamp program.

The term "head of household" was already contained in the Food Stamp Act at the time the statute was amended to include the voluntary quit disqualification.[21] At that time, "head of household" was defined by the Secretary as "that person in whose name application is made for participation in the program." 7 C.F.R. § 1600.2(r) (1967).

When the Food Stamp Act was amended in 1977 to add the voluntary quit sanction, Congress also amended

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[21] The Food Stamp Act provides that application be made by the "head of the household" unless it is impossible for that person to appear.

> The state plan . . . shall provide . . . that an applicant household may be represented in the certification process and that an eligible household may be represented in coupon issuance or food purchase by a person other than a member of the household so long as that person has been clearly designated as the representative of that household for that purpose by the *head of the household* or the spouse of the *head*, and, where the certification process is concerned, the representative is an adult who is sufficiently aware of relevant household circumstances, except that the Secretary may restrict the number of households which may be represented by an individual and otherwise establish criteria and verification standards for representation under this paragraph.

7 U.S.C. § 2020(e)(7)(emphasis added).

the application section. In its discussion of that section, the House Committee on Agriculture indicated a clear understanding that the "head of household" was "the person with primary responsibility for the household." *Anderson v. Lyng*, 644 F. Supp. at 1376.

> The household, through its *head* or spouse or his or her authorized representative, must appear at the office in order to obtain and fill out the application form . . . and to undergo an interview . . .
>
> Where it is impossible for the *head of the household* or the spouse to make application for participation, a responsible household member may be designated as the authorized representative . . . [A] responsible adult outside the household may be designated if the *head of the household*, the spouse, or other responsible household members cannot be interviewed; the authorized representative has been designated in writing by the *head of the household* or the spouse; and the authorized representative is adequately aware of pertinent household circumstances.
>
> An eligible household receives its ATP (authorization to purchase) card . . .
>
> The recipient takes his ATP card and ID card to the issuance unit, . . . which is responsible for the issuance of coupons to and the collection of cash from eligible households.
>
> The case number, project area code, and eligibility for delivered meals are required information on the card, as well as the name of *household head* or spouse, the name of designated authorized representative and signature lines for *household* head or spouse or authorized representative . . .
>
> Food stamps may be used by the *head of the eligible household* or other persons selected by him, but, upon request, the person using the stamps is required to present the identification

> card issued to the *head of the household* to the redeeming food store or meal service . . .
>
> The Committee also chose not to mandate that each food stamp be countersigned when purchased and used. Requiring countersignatures would result in longer lines at food stamp issuance outlets and grocery stores. No other household member could use the stamps, regardless of the *head's* work or health status, nor would an authorized representative be able to help.

H.R. Rep. No. 464, 95th Cong., 1st Sess. 254, 264-65, 306, 308, 309, 325-26, 335 (emphasis added), *reprinted in* 1977 U.S. Code Cong. & Admin. News 1978, 2199, 2200, 2242, 2244, 2245, 2261, 2270.

The same acceptance of the regulatory definition was evidenced by the House Committee in its discussion of the voluntary quit sanction. The Committee said:

> There is no prohibition, however, against the *head of a household (that member in whose name application is made for participation in the program)* that was, while the head was working, ineligible for food stamps quitting work and thereby rendering the entire household eligible for food stamps. To avoid this anomaly, the Committee would prevent such a work drop-out and the *household of which he or she was head* from becoming eligible for food stamps unless there was good cause . . . for voluntarily quitting . . .

H.R. Rep. No. 464, 95th Cong., 1st Sess. 168 (emphasis added), *reprinted in* 1977 U.S. Code Cong. & Ad. News 1978, 2138.

Other legislative history from 1977 supports the conclusion that Congress did not intend the voluntary quit sanction to fall on a household where the quit was by someone without responsibility for the others, even if that person was the greatest wage earner.

During a floor debate on a proposal, eventually rejected, to disqualify households that contained strikers,

Congressman Wright asked whether "a family whose breadwinner is denied his job by reason of an industrial dispute" should be treated differently from strikers. Congressman Allen, speaking against the proposal, responded that it would be wrong to penalize a family just because the principal wage earner quit, if the principal wage earner was not the head of the household.

> Under this amendment, if anyone in the household is on strike, even a 19-year-old girl in the household who happens to go to work and is a member of the Garment Workers' Union, for example, and the union votes to strike, and her father, the bread-winner, let us say, is a laborer working for a contractor where weather conditions cause him to be out of work . . . the whole family would . . . be penalized and rendered ineligible for food stamps simply because the 19-year-old daughter was on strike, even though she is not the head of the household.

133 Cong. Rec. 25228 (July 27, 1977).

In 1979, the Secretary of USDA substituted the term "primary wage earner" for "head of household" in a regulation which purported to define the latter. The Secretary acknowledged that this "definition" was a departure from the meaning which had been in place since 1964.

> The title "head of household" is currently assigned to the person in whose name application is made for the program. The Department proposes that the state agency shall classify as head of household that household member who . . . was responsible for acquiring the greatest amount of financial support within the last 60 days." The change is proposed in response to the statutory requirement that a household not already certified be ineligible for 60 days after the "head of household" voluntarily quits a job without good cause. This statutory disqualification places new importance on the definition of

> household head. The Congressional purpose is to prevent the family bread winner from voluntarily quitting work and then immediately relying on the program for support. The Department's proposed head of household definition enforces that purpose.

43 Fed. Reg. 18,874, 18,879 (1978).

Moreover, the Secretary also conceded that this substitution of the term "primary wage earner" for "head of household" only for purposes of the voluntary quit disqualification has created inconsistent meanings for the term as it is used throughout the Food Stamp Act.[22] The Secretary "redefined 'head of household' only for purposes of one provision, not for purposes of the entire act. The Secretary agreed that the specialized definition, when applied throughout the Act, was unworkable; it was inconsistent with the statutory scheme and the role of the head of household throughout the Food Stamp Program." *Dubuque v. Yeutter*, 728 F. Supp. at 313.

This Court, in decisions subsequent to *Chevron*, recognized internal statutory harmony as an appropriate

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[22] According to the Secretary:

> Nearly all of the 300 commenters discussing this section criticized this definition [as primary wage earner] because it would permit a minor to be the household head and would cause the household head to change frequently. Since this regulatory definition was proposed *only for purposes of implementing the voluntary quit provision* of the Act, it has been modified. *States may devise their own method for designating the head of household.* However, that definition may be used purely for recordkeeping purposes and cannot be used to impose restrictions on who may apply for food stamps. A definition of primary wage earner will be proposed in subsequent rulemaking in order to implement the voluntary quit provision.

43 Fed. Reg. 47,846, 47,853 (1978) (emphasis supplied).

tool of statutory construction when reviewing agency interpretations. *Connecticut Dept. of Income Maintenance v. Heckler*, 471 U.S. at 538 (1985); *Lawrence County v. Lead-Deadwood School District*, 469 U.S. 256, 267 (1985). Other federal courts have likewise stressed the importance of internal consistency. *See e.g., Russo v. Texaco*, 808 F.2d 211, 227 (3d Cir. 1986) (same term used more than once in a section of a statute will be construed to have the same meaning throughout the statute); *Firestone v. Howerton*, 671 F.2d 317, 320 n.6 (9th Cir. 1982) (in general, same term used in different sections of a statute will be given the same meaning).

The term "head of household" had a consistent meaning since 1964, and the meaning has now been changed but only for limited purposes. The voluntary quit regulation, in light of the above discussion, is contrary to clear congressional intent and therefore invalid, pursuant to step one of the *Chevron* test.

B. The Voluntary Quit Regulation and HRS Manual Provisions Are Not Entitled To Deference At Step Two Of The *Chevron* Analysis.

Although the discussion above demonstrates that it is not necessary to reach step two of the *Chevron* test, it is significant that the voluntary quit regulation would likewise fail to survive analysis at step two. The regulation, contrary to the district court's opinion, is simply unreasonable.

Petitioner agrees that to be reasonable, an agency construction of a statute need not be the best, the only, or the most precise interpretation available.[23] Nevertheless, this Court has said that:

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[23] *Chevron U.S.A., Inc. v. National Resources Defense Council*, 467 U.S. at 843-44, 843 n.11.

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> [A]gency deference has not come so far that we will uphold regulations whenever it is possible to "conceive a basis" for administrative action. To the contrary, the "presumption of regularity afforded an agency in fulfilling its statutory mandate" is not equivalent to "the minimum rationality a statue must bear in order to withstand analysis under the Due Process Clause"

Bowen v. American Hosp. Ass'n, 476 U.S. 610, 626-27 (1986) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The district court *sub judice* ruled that the challenged interpretation is reasonable because it furthers the

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One of the principles behind judicial deference, is the necessity of agency personnel to develop technical expertise regarding the subject matter of the statute. Traditionally, courts have recognized that expertise, in areas such as environmental protection (*Chevron; United States v. Riverside Bayview Homes, Inc.* 474 U.S. 121 (1985); *Chemical Manufacturers v. Natural Resources Defense Council*, 470 U.S. 116 (1985)); regulation of air transportation (*United States Dept. of Transp. v. Paralyzed Veterans*, 477 U.S. 597 (1986)); and the regulation of toxic substances in agricultural commodities distributed in interstate commerce for human consumption, (*Young v. Community Nutrition Institute*, 476 U.S. 974 (1986)).

In this case, however "[t]he meaning of the words 'head of household' requires no special experience or technical learning." *Dubuque*, at 316 (on denial of Secretary Yeutter's Motion for Rehearing). The Department of Agriculture would have no special expertise regarding the meaning of "household" or "head of household". The Food Stamp Act, unlike other federal programs providing aid to the indigent, is regulated by USDA rather than the Department of Health and Human Services. This is because, besides providing nutrition to the poor, the Act was also intended as a benefit to America's farmers. *See e.g. United States Dept. of Agriculture v. Moreno*, 413 U.S. 528, 533 (1973) and discussion at pp. 26-27, *infra*.

"reform" objectives of the voluntary quit amendment in the Food Stamp Act.

> More specifically, the provision was designed to prevent families from making themselves dependent on the Food Stamp Program by deliberately turning off their source of support.[24]

App. C, p. 15a.

The district court correctly states that one of the purposes of the voluntary quit provision is to encourage able bodied individuals to work rather than rely on governmental assistance. The district court, however, ignores the reality that substituting the term "primary wage earner" for "head of household" can actually frustrate that goal.[25] For example, if Ms. Verna's boyfriend (Mr. Riley)

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[24] It is crucial to note that *all* adult members of a food stamp household are required (absent some exemption) to either find a job or participate in an employment and training program, 7 C.F.R. § 273.7. If a household member fails, without good cause, to meet these work requirements, the *individual* is ineligible to participate in the food stamp program for two months. Obviously, if an adult individual who is not the head of the household, as presently defined, quits a job, he or she is not entitled to sit back and live off of federally subsidized benefits.

By sanctioning the entire household when the true responsible head of household quits a job, the goal of discouraging families from making themselves needy is clearly met. Use of the term "primary" or "principal wage earner", as seen above, actually frustrates that objective and undermines the original purpose of the Food Stamp Act.

[25] The mere fact that the regulation may serve the plain purpose of the voluntary quit disqualification does not render a definition, otherwise contrary to congressional intent, and/or unreasonable, a permissible construction of the Food Stamp Act. *See Board of Governors v. Dimension Fin. Corp.*, 474 U.S. 361 (1986). ("Invocation of the 'plain purpose' of legislation at the

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had left her household after causing the entire household to be disqualified from receiving food stamp benefits, Ms. Verna and her children would once again become immediately eligible for benefits.[26] If Mr. Riley then moved in with his disabled sister and her child, who relied totally on SSI and food stamps to support themselves, he would be treated as an ineligible member of their food stamp household.[27] If Mr. Riley became employed while living with his sister, he would suddenly become the head of her household and both she and her child would be disqualified for the remainder of the sanction period. Certainly this creates a major disincentive for Mr. Riley to get a job after joining his sister's household.[28] This example further demonstrates the inconsistencies, even within the same portion of the same regulation created by this unreasonable definition.[29] Moreover, and more

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expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent." *Id.* at 374).

[26] 7 C.F.R. § 273.7(n)(5)(ii).

[27] *Id.*

[28] *Id.* Note: All of the facts set forth in the above example are hypothetical and not part of the record herein.

[29] As the court in *Anderson v. Lyng* pointed out:

> [Moreover, if the "primary wage earner" were always considered the "head of the household", this provision would have a senseless effect. The provision would discourage an ineligible member of an eligible household from ever increasing his or her income to the point where he or she brought home the largest paycheck, thereby becoming the "primary wage earner" and disqualifying the entire household. Surely, Congress did not intend to discourage

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importantly, the unreasonableness of the substitution of "principal wage earner" for "head of household" was at least implicitly acknowledged by the former Secretary of USDA, Richard Lyng. In *Anderson v. Lyng*, 644 F. Supp. 1372 (M.D. Ala. 1986), the district court invalidated the voluntary quit regulation. One of the named plaintiffs in *Anderson* was the head of a household in the traditional sense of the term, while an 18-year-old child was the "primary wage earner". The entire household was disqualified from receiving food stamp benefits when the child voluntarily quit a job. Following the rendering of the *Anderson* decision, presumably in response to it, Secretary Lyng amended the voluntary quit regulation so that children living with a parent, or person fulfilling the role of parent, are not considered the "head of household" for purposes of the voluntary quit regulation regardless of the amount of income they earn.[30]

The idea that a child could be the "head of household" illustrated the unreasonableness of the challenged regulation. The Secretary, rather than reverting to the traditional, and congressionally mandated definition of the term, applied a band-aid in the form of a convoluted amendment to an already unreasonable regulation.

Under the regulation, as it stands, a severely developmentally disabled adult individual who received wages from working in a sheltered workshop could be considered the "head of household" if he or she earned the most money in the household. The fact that this individual may be incapable of making decisions regarding the household would be irrelevant to his or her

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any household member, eligible or ineligible, from increasing his or her income as much as possible].

Id. 644 F. Supp. at 1380.

[30] 7 C.F.R. § 273.1(d)(2).

classification as "head of household". While it is true that the Secretary is free to amend the regulation again to account for the nonsensical result, it is quite apparent that the regulation is unreasonable and that, as Judge Hatchett pointed out in his dissent:

> It is inconceivable that Congress intended the action of an irresponsible member of the household would disqualify the entire household[31] simply because that person earns more money than the person primary responsible for the household.

App. A pp. 7a-8a.

The voluntary quit regulation and HRS manual provision are impermissible constructions of the Food Stamp Act. The definition flies in the face of clear congressional intent and is highly unreasonable. Judicial deference, therefore, should not have been accorded by the lower court.

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[31] When one compares the voluntary quit sanction to the sanctions prescribed for food stamp program violations (fraud), is even more clear that Congress did not intend that the conduct or irresponsible transient members of the household would affect the entire household's eligibility.

Under the Act, if an individual commits food stamp fraud, they, as *individuals* are disqualified from participating in the program. *See* generally 7 C.F.R. § 273.16. The sanctioning process for fraud is progressive. The first violation results in a six month disqualification; the second a one year ineligibility; and the third results in a permanent disqualification. 7 C.F.R. § 273.16(b). It is hard to believe that Congress would allow the conduct of a household member with no household responsibility or incentive for household responsibility to disqualify an entire household from benefits on the basis that he or she quit a job when the *criminal* activity of a household member, whether or not they were the "head of household", or the "primary wage earner" only serves to disqualify that individual. Other household members remain eligible. *Id.*

II

THE DECISION BELOW, UPHOLDING THE CHALLENGED DEFINITION OF "HEAD OF HOUSEHOLD" IS IN CONFLICT WITH DECISIONS OF OTHER FEDERAL COURTS.

Several lower federal courts have applied the analysis required by *Chevron*, and, unlike the court below, invalidated the voluntary quit regulation as an impermissible construction of the Food Stamp Act. The first reported decision in this area was in 1986 in *Anderson v. Lyng*,[32] in which a district court in Alabama invalidated the regulation. In 1987, a district court in North Carolina likewise invalidated the regulation, *Wilson v. Lyng*,[33] 622 F. Supp. 1391 (E.D.N.C. 1987).

Recently, district courts in two additional states have invalidated the voluntary quit regulation. These courts ruled that under the *Chevron* test, the challenged regulation was contrary to clearly expressed congressional intent. *Dubuque v. Yeutter*,[34] 728 F. Supp. at 316; *Maine Association of Interdependent Neighborhoods v. Commissioner*,[35] 734 F. Supp. at 253. These two decisions have been appealed to the court of appeals for the Second and First Circuits, respectively.

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[32] The court of appeals decision herein had the effect of vacating the district court's decision in *Anderson*.

[33] The Fourth Circuit Court of Appeals subsequently reversed this decision holding that the regulation was a valid construction of the Food Stamp Act.

[34] The *Dubuque* court specifically rejected the Fourth Circuit's conclusion that the regulation was a permissible construction of the Act. *Id.* at 316.

[35] The court in the *Maine* case, rejected the Eleventh Circuit's decision in this case. *Id.* at 752-753.

Finally, a case on this issue was recently filed in federal district court in Arizona. *Valensuela v. Yeutter,* No. 90-134-TUC-RMB (S.D. Ariz. 1990).

Although there is not a current conflict among the circuit courts of appeal, there is a clear potential for conflict. This Court has considered conflict between decisions of court of appeals and a district court as a *factor* in deciding whether to grant certiorari. *Beal v. Doe,* 432 U.S. 438, 473 n.7 (1977); *Calhoun v. Harvey,* 379 U.S. 134, 137 (1964); *Shapiro v. United States,* 335 U.S. 1, 4 (1948); *United States v. Constantine,* 296 U.S. 287, 290 (1935).

Moreover, this Court has granted *certiorari* when the conflicting district court decision is on appeal to another court of appeals and an affirmance would create a genuine conflict among the courts of appeal. *See Gulf States Steel Co. v. United States,* 287 U.S. 32 (1932).

The validity of the regulation has been addressed by several federal courts with varying and conflicting results. Ms. Verna therefore urges this Court to grant *certiorari* to resolve this conflict.

III

THIS CASE INVOLVES THE CONSTRUCTION OF A MAJOR FEDERAL STATUTE DESIGNED TO ALLEVIATE HUNGER AND MALNUTRITION AMONG LOW INCOME INDIVIDUALS AND FAMILIES, AND WHICH CONGRESS HAS MANDATED BE IMPLEMENTED ACCORDING TO UNIFORM NATIONAL STANDARDS.

The Food Stamp Act was originally enacted in order to allow low income families to obtain a more nutritious diet. See pp. 3-4, *supra.* In addition, a major congressional purpose in establishing the food stamp program was to strengthen the agricultural economy as well as to result in more orderly marketing and distribution of food. *United*

States Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973). This Court has granted *certiorari* to resolve issues concerning "the construction of a major federal statute". *United States v. Donovan*, 429 U.S. 413, 422 (1977).[36] This is especially true where the issue involved is a significant part of the statute. *United States v. Ruzscka*, 329 U.S. 287 (1946).

In creating any public benefits program, there is tension between helping the needy, but limiting benefits to those whose need was not self-created. Congress recognized that tension in imposing the "voluntary quit" provision of the Food Stamp Act. In promulgating the voluntary quit provision, Congress sought to place emphasis "on providing benefits to those . . . who are unable to provide for themselves and less to those . . . who have made themselves 'needy'." S.Rep. 97-594, 1977 U.S. Code Cong. & Admin. News, 1641, 1677 (emphasis omitted). The issue of where to strike this balance thus has been a significant part of the statute. In fact, in 1985, the Food Stamp Act was amended to include work registration and other employment and training conditions for eligibility. It is significant that those individuals who are exempt from these new requirements (children, and elderly and disabled adults) are most likely to be harmed by the challenged definition of "head of household."

The issue involved in this case is also one which will continue to arise with some frequency. This is demonstrated not only in the number of cases which are

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[36] See also *Donaldson v. United States*, 400 U.S. 517, 522 (1971) ("Certiorari was granted . . . because the case appeared to raise important questions relating to the administration and enforcement of the revenue laws . . . "); *NLRB v. International Van Lines*, 409 U.S. 48, 52 (1972) (certiorari granted to resolve "principles important to the administration of the National Labor Relations Act . . . ").

pending in the lower courts,[37] but also by the increase in homelessness in this country over the last several years. As more low income families are forced to share housing to cut down expenses or move in with relatives and friends after eviction, the number of unfair disqualifications under this provision will continue to grow.

This Court acknowledged the practice of low income families sharing household expenses for reasons of economy or health in *Lyng v. Castillo*, 477 U.S. 635, 640-642 (1986). In that case the question arose as to whether it was constitutional to force close relatives who lived together to receive food stamps as one economic unit. This Court upheld the constitutionality of that provision in the statute. Thus, families who reside together for economic or health reasons must generally be treated as one economic unit for food stamp purposes.

This case now raises the issue of whether Congress intended that entire household to be disqualified from food stamp benefits when a peripheral adult who has not acted as the head of the household quits a job. Examples of situations where this issue will arise abound. If a single parent struggling to support her children allows her sister to move in for whatever reason, and the sister quits a job, the entire household can be cut off of vital food stamps if the sister's job happened to pay more than the mother's job. Whether Congress intended this result is an important issue that should be resolved by this Court. Again, because of the large number of cases raising this issue, an early and definitive ruling by the Court is

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[37] See footnote 5, *supra* and discussion at pp. 25-26 in text.

desirable. See *Laing v. United States*, 423 U.S. 161, 167 (1976); *United States v. Standard Oil Co.*, 332 U.S. 301, 302 n.2 (1947).

Moreover, the Food Stamp Act requires that food stamp programs be administered by the various states according to uniform national standards. 7 U.S.C. § 2014(b). The varying decisions of the lower federal courts frustrates the statute's mandate for uniformity.

This Court has in the past recognized the importance of resolving issues which arise under the Food Stamp Act. *Lyng v. International Union, UAW*, 485 U.S. 360 (1988); *Lyng v. Castillo*, 477 U.S. 635 (1986); *Atkins v. Parker*, 472 U.S. 115 (1985); *Knebel v. Hein*, 429 U.S. 288 (1977); *Moreno v. U.S. Dept. of Agriculture*, 413 U.S. 528 (1973); *Murry v. U.S. Dept. of Agriculture*, 413 U.S. 508 (1973). Similarly, the issue raised in this case and the numerous other pending cases should be resolved by this Court.

CONCLUSION

For the reasons set forth above, and on the basis of the authorities cited, a writ of *certiorari* should be issued to review the decision of the court of appeals in this case.

Respectfully submitted,

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APPENDIX A

Jeanette VERNA, in behalf of herself and all others similarly situated,

Plaintiff-Appellant,

v.

Gregory L. COLER, Secretary, Department of Health Rehabilitative Services, Defendant-Third Party-Plaintiff-Appellee,

v.

Richard E. LYNG, Secretary, United States Department of Agriculture and Consumer Services, Third-Party Defendant.

No. 89-5363.

United States Court of Appeals,
Eleventh Circuit.

Feb. 6, 1990.

Food stamp recipient brought class action challenging "voluntary quit" regulation promulgated under Food Stamp Act. The United States District Court for the Southern District of Florida No. 87-495-CIV, Thomas E. Scott, J., upheld regulation, 710 F.Supp. 1339, and appeal was taken. The Court of Appeals held that Food Stamp Act voluntary quit regulation, and regulation defining "head of household" as household's "primary wage earner," are not inconsistent with Federal Food Stamp Act.

Affirmed.

Hatchett, Circuit Judge, filed dissenting opinion.

Sally G. Schmidt, Lake Worth, Fla., for plaintiff-appellant.

Ken Muszynski, General Counsel Dept. HHS, Tallahassee, Fla., for defendant-third party-plaintiff-appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before HATCHETT and EDMONDSON, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM:

The sole issue on appeal is whether the Federal Food Stamp voluntary quit regulation, 7 C.F.R. 273.7(c), and the regulation defining "head of household" as the household's "primary wage earner," 7 C.F.R. 273.1(d)(2) are inconsistent with the Federal Food Stamp Act, 7 U.S.C. § 2011 *et seq.*, or are valid as a permissible construction of the Act in the exercise of the Secretary's delegated powers. The district court upheld the validity of the regulations and entered summary judgment in favor of the Secretary.

The undisputed facts are that Verna's household included her two children and her boyfriend Riley. He was the primary wage earner for the household as that term is used in the regulations notwithstanding Verna's contributions to the household. Riley quit his job without good cause, resulting in the disqualification of Verna's household in accordance with the regulation's definitions.

We agree with the district court that the regulations are not inconsistent with the Act, and adopt the district court's opinion, published at 710 F.Supp. 1339, as the opinion of this court.

AFFIRMED.

HATCHETT, Circuit Judge, dissenting:

Because I believe the HRS regulation conflicts with the Food Stamp Act, I respectfully dissent.

In October, 1985, Jeanette Verna applied for food stamp benefits at the Florida Department of Health and Rehabilitative Services's (HRS) food stamp office in Indian River County, Florida. On the application, Verna named herself as head of the household and listed her two children, Robert and Patricia Verna, and her boyfriend, Lawrence Riley, as members of the household. Although Riley earned more money than Verna, he was a transient member of the household, and even when present, contributed only to the rent. Verna maintained the lease and all utility accounts for the household under her name. In addition, she bought and prepared the family's food and provided for the children's educational and medical needs.

After HRS certified the family's application, Verna submitted monthly eligibility and income reports to the HRS food stamp certification office. On June 26, 1986, Verna received a notice of a case action from her HRS food stamp certification worker informing her that the household was disqualified from receiving food stamps for July – September, 1986, because Riley had voluntarily quit his job without good cause. Under the "voluntary quit" provisions of the HRS manual, any household whose primary wage earner voluntarily quits a job without good cause becomes ineligible to participate in the food stamp program for three months.

The purpose of the food stamp program is to alleviate "hunger and malnutrition" among low-income households. 7 U.S.C.S. § 2011 (1988). Congress recognized, however, that "it is still desirable for those who can do so to work in order to support themselves and their families." H.R.Rep. No. 91-1402, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.Code Cong. & Admin.News 6025, 6034. By enacting the "voluntary quit" provisions, Congress sought to disqualify individuals and households which were otherwise eligible. *See* 7 U.S.C.S. § 2015 (1988). Congress sought to place less emphasis on those "who have *made* themselves 'needy' " when it enacted the voluntary quit provisions. S.Rep. No. 97-504, 97th Cong., 2d Sess., *reprinted in* 1982 U.S.Code Cong. & Admin.News 1641, 1677 (emphasis in original). The voluntary quit provision provides that when the "head of household" voluntarily quits his or her employment without cause, the entire household loses benefits for up to three months. Pub.L. 95-113, Title XIII, § 1301, Sept. 29, 1977. The term head of household was not defined in the Act. The Secretary of Agriculture, pursuant to statutory authority, promulgated regulations defining "head of household" as the household's primary wage earner. *See* 7 C.F.R. § 273.1(d)(2) (1988).

In reviewing an agency's construction of the statutory term, this court must (1) determine whether Congress has clearly expressed its intent on the precise question at issue, and (2) if congressional intent is unclear, determine whether the agency's determination is reasonable. *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781,

81 L.Ed.2d 694 (1984). In conducting the requisite analysis, the court need not determine whether an agency's interpretation is reasonable, if it finds that Congress's intent on the issue is clear.

My primary disagreement with the majority and the district court's opinion, is that they state the proper analysis, but proceed to incorrectly analyze the case. Rather than beginning the analysis by determining whether Congress has clearly expressed its intent on the precise question at issue, the district court proceeds to the second question and considers whether the agency's interpretation of the statute is reasonable. Beginning the analysis where we must, I conclude that when Congress passed the voluntary quit provision, it intended that the term "head of household" refer to the person with primary responsibility for the household. Consequently, I would hold that the HRS's regulation is in conflict with the statute and impermissible.

The first step in determining whether Congress has intended to give a statutory provision a particular meaning is to look to the plain meaning of the provision itself. *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 106 S.Ct. 681, 88 L.Ed.2d 691 (1986). Thus, in construing a statutory term, words will be interpreted according to their ordinary, contemporary, and common meaning, unless otherwise defined. *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 314, 62 L.Ed.2d 199 (1979). The term, "head of household," suggests on its face the person most responsible in the household; the person with primary responsibility for the household. *See Anderson v. Lyng*, 644 F.Supp. 1372, 1375 (M.D.Ala.1986). Both the common dictionary definition and Black's Law Dictionary support a

similar construction of the term. *Webster's New Collegiate Dictionary,* 522 (1979) ("head" defined as principal, chief); *Black's Law Dictionary,* 648 (1979) ("head of household" defined as individual who actually supports and maintains individuals who are closely connected with him or her).

The legislative history of the voluntary quit provision also indicates that Congress intended that the term "head of household" mean the person with primary responsibility for the family. According to a House Report, prior to 1977, application to the Food Stamp Program required that "[t]he household, through its head or spouse or his or her authorized representative," fill out the application. H.R.Rep. No. 464, 95th Cong., 1st Sess., *reprinted in* 1977 U.S.Code Cong. & Admin.News 1704, 1971, 2199. "Where it is impossible for the head of the household or the spouse to make application, a household member may be designated as the authorized representative." *Id.* at 2200.

The term "head of household" is used in other agencies to define a person who assumes general responsibility for the household. For example, the Social Security Administration considers an applicant/recipient of the Social Security Income Program to be a "head of household [if he or she is] responsible for the day-to-day decisions on the operation of [the] household." 20 C.F.R. § 416.1866(a) (1988). Likewise, the Bureau of Indian Affairs defines head of household as "that individual who speaks on behalf of the members of the household and who is designated by the household members to act as [the head]." 25 C.F.R. § 700.69(b) (1988).

The use of the term "primary wage earner" clearly connotes a different concept from the term "head of household." Congress could have chosen to use the term "primary wage earner" in the voluntary quit provision. Instead, the term "head of household" was the only term used in the Act for more than ten years, without any reference to the term "primary wage earner." This fact further leads me to reject any attempt by the agency to substitute one term for the other.

Interpreting the term "head of household" in accordance with its plain meaning would not frustrate the purpose of the Act. In fact, the plain-meaning interpretation is consistent with the Act's overall purpose of "safeguard[ing] the health and well-being of the Nation's population by raising levels of nutrition among low-income households . . . [by] permit[ting] low-income households to obtain a more nutritious diet." 7 U.S.C. § 2011. The plain-meaning interpretation would permit low income households to continue to receive a more nutritious diet by increasing the food purchasing power for all eligible households.

In the context of the voluntary quit provision, the term "head of household" describes the person whose conduct will be the sole factor in disqualifying an entire household from receiving food stamp benefits. In seeking to discourage an entire household from making itself needy, Congress undoubtedly sought to address the conduct of the leader or other responsible person in the household. It is inconceivable that Congress intended

that the action of an irresponsible member of the household would disqualify the entire household, simply because that member earns more money than the person primarily responsible for the household.

Having found that Congress clearly intended that the term head of household mean the person with primary responsibility for the household, I place little significance on the fact that the term primary wage earner appeared, for the first time, in the House and Senate Conference Reports in 1981, as if it were equivalent to the term head of household. This usage of the term, four years after the voluntary quit provision was enacted, cannot substitute for the clear congressional intent which existed at the time the legislation was first enacted. *See Southeastern Community College v. Davis*, 442 U.S. 397, 411 n. 11, 99 S.Ct. 2361, 2370 n. 11, 60 L.Ed.2d 980 (1979).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 89-5363

JEANETTE VERNA, in behalf of herself and all others similarly situated,	Plaintiff-Appellant
versus	
GREGORY L. COLER, Secretary, Department of Health Rehabilitative Services,	Defendant-Third Party-Plaintiff-Appellee,
versus	
RICHARD E. LYNG, Secretary, United States Department of Agriculture and Consumer Services,	Third-Party Defendant.

FILED
APR 6 1990

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING IN BANC (Opinion February 6, 1990, 11 Cir., 198___, ___ F.2d ___).

Before HATCHETT and EDMONDSON, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be

polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause in banc, and a majority of the judges in active service not having voted in favor of it, Rehearing In Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Joseph W. Hatchett
United States Circuit Judge

APPENDIX C

Jeanette VERNA, on behalf of herself and all others similarly situated, Plaintiff,

v.

Gregory L. COLER, Secretary, Department of Health and Rehabilitative Services, State of Florida, Defendant/Third Party Plaintiff,

v.

Richard E. LYNG, Secretary, United States Department of Agriculture and Consumer Services, Third Party Defendant.

No. 87-0495-CIV.

United States District Court,
S.D. Florida.
March 16, 1989.

Food stamp recipient brought class action challenging "voluntary quit" regulation promulgated under Food Stamp Act. On cross motions for summary judgment, the District Court, Scott, J., held that administrative regulation equating "head of the household" with "primary wage earner" was reasonable construction of Food Stamp Act provision that temporarily disqualifies entire household when head of household voluntarily quits any job without good cause.

Plaintiff's motion for summary judgment denied; defendant's cross motion for summary judgment granted.

Maria L. Soto, Florida Rural Legal Services, Inc., Fort Pierce, Fla., Sally Schmidt, Florida Rural Legal Services, Inc., Belle Glade, Fla., for plaintiff.

Carl Morstadt, Asst. Gen. Counsel, Dept. of Health and Rehabilitative Services, Tallahassee, Fla., for defendant Coler.

Lynn Rosenthal, Asst. U.S. Atty., Miami, Fla., for third party defendant Lyng.

MEMORANDUM OPINION

SCOTT, District Judge.

This is a class action lawsuit challenging the "voluntary quit" regulation promulgated under the Food Stamp Act, 7 U.S.C. § 2011 *et seq.* As the case presents purely a legal issue of statutory construction, the Court resolves the matter on the parties' Cross-Motions for Summary Judgment.

I. FACTUAL BACKGROUND

The facts are not in dispute. In October 1985, Jeanette Verna applied for food stamp benefits at the Florida Department of Health and Rehabilitative Services (HRS) food stamp office in Indian River County, Florida. Verna named herself on the application as head of the household, and listed her two children, Robert and Patricia Verna, and her boyfriend, Lawrence Riley, as members of the household. Although Riley earned more money than Verna, he was a transient member of the household, and even when present, contributed only to the rent. Verna maintained the lease and all utility accounts for the household under her name. In addition, she brought and prepared the family's food, and provided for the children's schooling and medical needs.

After HRS certified the family's application, Verna submitted Monthly Eligibility and Income Reports to the HRS food stamp certification office. On June 26, 1986, Verna received a Notice of Case Action from her HRS food stamp certification worker informing her that the household was disqualified from receiving food stamps for July-September, 1986 because Riley had voluntarily quit his job without good cause. In November 1986, Verna requested that HRS restore all food stamp benefits withheld from her household for this three month period. HRS denied her request. When Verna questioned the decision, HRS mailed her a copy of HRS Manual Chapter 8-13 entitled "Voluntary Quit," which provides that any household whose primary wage earner voluntarily quits any job without good cause shall be ineligible to participate in the food stamp program for three months. Thereafter, Plaintiff filed this lawsuit.

II. CONTENTIONS OF THE PARTIES

In her class action complaint against Richard E. Lyng, Secretary of the United State Department of Agriculture and Consumer Services (USDA), and Gregory L. Coler, Secretary of HRS, Plaintiff challenges the "voluntary quit" regulation promulgated by the Secretary of USDA and implemented by the Secretary of HRS in Florida.[1] Plaintiff seeks restoration of food stamp benefits and a declaratory judgment that the regulation conflicts with the Food Stamp Act in violation of Plaintiff's rights under

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[1] Lyng was initially dismissed from the action and then rejoined by Coler as a third party defendant.

the due process clause and equal protection clause of the Fifth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983. Defendants' position is that the regulation is a permissible construction of the Act. Our analysis follows.

III. LEGAL ANALYSIS

A. *Statutory Language*

Under the reform amendments to the Food Stamp Act, if the "head of the household" voluntarily quits any job without good cause, then the entire household becomes ineligible to participate in the state food stamp program for 90 days. 7 U.S.C. § 2015(d)(1)(B)(ii). Although the term "head of the household" is not defined in the Act, the Secretary of USDA is given general authority to issue regulations that are necessary or appropriate to implement the Act. 7 U.S.C. 2013(c). Pursuant to this authority, the Secretary has issued a regulation that substitutes the term "primary wage earner" for "head of the household." 7 C.F.R. § 273.7. Thus, under the regulation, the primary wage earner disqualifies the entire household from coverage by voluntarily quitting work without good cause.

B. *Statutory Construction*

In reviewing an agency's construction of a statutory term, the Court must address two issues. First, the Court must determine whether Congress has clearly expressed its intent on the precise question at issue. *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984). If the intent of

Congress is clear, the inquiry is at an end, for the Court must give effect to that intent, and any contrary administrative construction must fall. *Id.* at 843 n. 9, 104 S.Ct. at 2781 n. 9.

However, where the statute is silent or ambiguous on the term at issue, the Court is not free to "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Id.* at 843, 104 S.Ct. at 2782. Rather, the Court must defer to the agency's interpretation as long as it is a permissible construction of the statute. *Id.* The regulation need not embody the only permissible construction of the statute, as long as the agency's interpretation is a reasonable one. *Id.* at 843-44 & 843 n.11, 104 S.Ct. at 2781-82 & 2782 n.11.

Applying this standard, we find that the Secretary's interpretation is reasonable because it furthers the reform objectives of the amendments to the Food Stamp Act. The voluntary quit provision was intended to reduce fraud and abuse of the food stamp program and simplify administration. H.R.Rep. No. 95-464, 95th Cong., 1st Sess. at 168, *reprinted in* 1977 U.S. Code Cong. & Ad.News 1704, 1978, 2138. More specifically, the provision was designed to prevent families from making themselves dependent on the food stamp program by deliberately turning off their principal source of support. *See Wilson v. Lyng*, 856 F.2d 630, 634-35 (4th Cir.1988). Even when the decision to quit work is not directed at obtaining welfare benefits, the result is the same. We agree with the Secretary that Congress intended that "those needy who are able to contribute toward their support, even in small measure, be encouraged to do so, for their own sake as well as for the sake of the needy who would thereby have available

to them a greater portion of the federal funds allotted to the Food Stamp Program." Defendants' Brief at 10; *see* Senate Rep. No. 97-504, 97th Cong., 2nd Sess., *reprinted in* 1982 U.S.Code Cong. & Ad.News 1641, 1677 (The purpose of the voluntary quit provision is to place more emphasis "on providing benefits to those who are unable to provide for themselves and less to those, such as in this situation, who have *made* themselves 'needy.' ") (emphasis in original).

Indeed, there is some evidence that Congress viewed the terms "primary wage earner" and "head of the household" as interchangeable. In 1981, when Congress extended the voluntary quit provision to cover households already certified to receive benefits, as well as households applying for the first time, the term "primary wage earner" appeared in the House and Senate Conference Committee Reports as if it were the equivalent of the term "head of the household." *See* H.R. Conference Rep. No. 377, 97th Cong., 1st Sess., *reprinted in* 1981 U.S.Code Cong. & Ad.News 1965, 2250, 2315; Senate Conference Rep. No. 290, 97th Cong., 1st Sess., p. 218 (1980). More importantly, at that juncture, Congress did not take the opportunity to correct the Secretary's interpretation of the Act, as it could easily have done by providing a contrary definition. "Congress is deemed to know the executive and judicial gloss given certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning. . . . Congressional silence in the Act indicates acceptance of the prior practice." *Florida National Guard v. Federal Labor Relations Authority*, 699 F.2d 1082, 1087 (11th Cir.), *cert. denied*, 464 U.S.

1007, 104 S.Ct. 524, 78 L.Ed.2d 708 (1983) (citations omitted).

Confronted with these arguments, Plaintiff contends that the Secretary had no authority to construe "head of the household" to mean "primary wage earner," because this is contrary to the plain meaning of the Act. Plaintiff relies on *Anderson v. Lyng*, 644 F.Supp. 1372 (M.D.Ala. 1986), in which the court invalidated the voluntary quit regulation under a plain meaning analysis. That court concluded that the term head of household

> suggests on its fact [sic] the most responsible person in the household, the person with primary responsibility for the household. *See Webster's Third New International Dictionary* 1046 (1976) ("head" defined as "director, chief," "one in charge"); *Black's Law Dictionary* 648 (1979) ("head of family or household" means person legally or morally obligated and entitled to and who actually does support, maintain and control family).

Id. at 1375.

It is true that ordinarily a term is given its plain meaning.[2] However, this rule does not apply when the

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[2] We are not convinced that the term "head of the household" has a plain meaning. The term has been variously defined. For example, Florida courts apply two distinct tests when making the factual determination as to which person is the head of the family under the homestead exemption of the Florida Constitution, Article X, Section 4: "(1) a legal duty to support that arises out of a family relationship – 'family in law,' or (2) continued communal living by at least two individuals in such circumstances that one is regarded as being in charge – 'family in fact.' " *Flannery v. Green*, 482 So.2d 400, 402 (Fla. 2d DCA 1985), *review denied*, 491 So.2d 279 (1986).

statutory language or legislative history indicates that Congress intended otherwise. *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 369 & 373, 106 S.Ct. 681, 690 & 695, 88 L.Ed.2d 691 (1986). In the present case, applying Plaintiff's "traditional definition" would frustrate the purpose of the Act by permitting the person most able to support the household to quit work without good cause, and then shift the economic burden to the Government at the expense of other needy families. Moreover, under Plaintiff's definition, the agency would be put in the difficult position of making a subjective determination of who was responsible for the household in a given case. This administrative burden would be contrary to the intent of Congress to simplify administration of the Act. *See* 1977 U.S. Code Cong. & Ad.News, 1978, *supra* at 2138.

In so holding, we draw support from the recent Fourth Circuit opinion in *Wilson v. Lyng*, 856 F.2d 630 (4th Cir.1988). The court in *Wilson* upheld the validity of the voluntary quit regulation upon a finding that the regulation "furthers the statutory goal of self-sufficient household units." In reversing the district court, the Fourth Circuit stressed that it is not the court's function to pass on the substantive fairness of a regulation as long as the administrative determination is based on a reasonable interpretation of the statute. *Id.* at 632-33. Consistent with this analysis, we find that the Secretary's determination was permissible as a reasonable construction of the Food Stamp Act.[3]

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[3] In reaching this conclusion, we note that our holding appears to conflict with the opinion authored in *Anderson v.*

(Continued on following page)

IV. CONCLUSION

The Court concludes that the voluntary quit regulation is valid as a permissible construction of the Act in the exercise of the Secretary's delegated powers. In accordance with this opinion, it is therefore ORDERED and ADJUDGED as follows:

1. Plaintiff's Motion for Summary Judgment is DENIED;

2. Defendant Coler's Cross-Motion for Summary Judgment is GRANTED.

DONE and ORDERED.

FINAL JUDGMENT

In accordance with Fed.R.Civ.Pro. 58, the Court hereby enters final judgment in favor of Defendant Coler and against Plaintiff in this case. As the Final Judgment in favor of Defendant Coler renders moot Coler's third party complaint against Defendant Lyng, the third part complaint is dismissed with prejudice. This entire case is dismissed with prejudice and is closed for all further administrative purposes.

DONE and ORDERED.

(Continued from previous page)

Lyng, 644 F.Supp. 1372 (M.D.Ala.1986). In order to resolve this conflict, we suggest that Plaintiff seek appropriate appellate review.

APPENDIX D

§ 2011. Congressional declaration of policy

It is declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. Congress finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(Pub.L.88-525, § 2, Aug. 31, 1964, 78 Stat. 703; Pub.L. 91-671, § 1, Jan. 11, 1971, 84 Stat. 2048; Pub.L. 95-113, Title XIII, § 1301, Sept. 29, 1977, 91 Stat. 958.)

APPENDIX E

§ 2015. Eligibility disqualifications

(d) Refusal to register for or accept employment; exemptions; labor disputes and strikes; employment and training programs

(1) Unless otherwise exempted by the provisions of paragraph (d)(2) of this subsection, (A) no person shall be eligible to participate in the food stamp program who is physically and mentally fit person between the ages of sixteen and sixty who (i) refuses at the time of application and once every twelve months thereafter to register for employment in a manner determined by the Secretary; (ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under paragraph (4), including any reasonable employment requirements as are prescribed by the State agency in accordance with paragraph (4), and the period of ineligibility shall be two months; (iii) refuses without good cause (including the lack of adequate child care for children above the age of five and under the age of twelve) to accept an offer of employment at a wage not less than the higher of either the applicable State or Federal minimum wage, or 80 per centum of the wage that would have governed had the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), been applicable to the offer of employment, and at a site or plant not then subject to a strike or lockout; and (B) no household shall be eligible to participate in the food stamp program (i) if the head of the household is a physically and mentally fit person between the ages of sixteen and sixty and such

individual refuses to do any of those acts described in clause (A) of this sentence, or (ii) if the head of the household voluntarily quits any job without good cause, but, in such case, the period of ineligibility shall be ninety days. An employee of the Federal Government, or of a State or political subdivision of a State, who engaged in a strike against the Federal Government, a State or political subdivision of a State and is dismissed from his job because of his participation in the strike shall be considered to have voluntarily quit such job without good cause. Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated. If the household member who committed the violation leaves the household during the period of ineligibility, such household shall no longer be subject to sanction for such violation and, if it is otherwise eligible, may resume participation in the food stamp program, but any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility.

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under Title IV of the Social Security Act, as amended (42 U.S.C. 602) or the Federal-State unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject that is comparable to a requirement of paragraph (1) shall be the

same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the care of a dependent child under age six or of an incapacitated person; (C) a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the food stamp program unless he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1), multiplied by thirty hours; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis.

(3) Notwithstanding any other provision of law, a household shall not participate in the food stamp program at any time that any member of such household, not exempt from the work registration requirements of paragraph (1) of this subsection, is on strike as defined in section 142(2) of Title 29, because of a labor dispute (other than a lockout) as defined in section 152(9) of Title 29: *Provided*, That a household shall not lose its eligibility to participate in the food stamp program as a result of one of its members going on strike if the household was eligible for food stamps immediately prior to such strike, however, such household shall not receive an increased

allotment as the result of a decrease in the income of the striking member or members of the household: *Provided further,* That such ineligibility shall not apply to any household that does not contain a member on strike, if any of its members refuses to accept employment at a plant or site because of a strike or lockout.

APPENDIX F

§ 273.1

(d) *Head of household.* (1) State agencies may designate the head of household or permit the household to do so. State agencies shall not use the head of household classification to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits.

(2) For purposes of failure to comply with §§ 273.7 and 273.22 head of household shall be considered to be the principal wage earner. The principal wage earner shall be the household member (including excluded members) who is the greatest source of earned income in the two months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in the work incentive program under Title IV of the Social Security Act, or is in receipt of unemployment compensation (or has registered for work as part of the unemployment compensation application process), or is employed or self employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of

household. If there is no principal source of earned income in the household, the household may designate the head of household.

APPENDIX G

§ 273.7

(g) *Failure to comply* – (1) *Noncompliance with Food Stamp Program work regulations.* If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph and is treated as an ineligible household member, per § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through § 273.7(b) other than through the exemptions of paragraph (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. If any household member who failed to comply joins another household as head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be considered an ineligible household member per § 273.1(b)(2). The State agency should determine whether good cause for the non-compliance exists, as discussed in paragraph (m) of this section. Within 10 days of the State determining the non-compliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified

in § 273.13. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its employment component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not

released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.